

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 89 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DUDHIBEN RAMJI

Versus

SANTABEN AMBA

Appearance:

1. First Appeal No. 89 of 1988
MR PM THAKKAR for Petitioner No. 1
MR VH DESAI for Respondent No. 1
MR ND NANAVALI for Respondent No. 2-3
-

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 22/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1.1 The present appeal is filed by the appellant original plaintiff under section 96 of the Code of Civil Procedure against the judgment and order passed by the learned 2nd Joint Civil Judge (Senior Division) Junagadh in Special Civil Suit No. 119 of 1978.

1.2 The present appellant- original plaintiff instituted the suit as an indigent person in forma pauperism for partition and declaration of 1/3rd share of the plaintiff in the suit property as well as for mesne profit thereof.

1.3 The plaintiff is a married daughter of deceased Ramji Karsan. The defendant no.1 is also a married daughter of deceased Ramji Karsan of village Ganfuliya, Taluka Vanthali. The defendant no.2 is the second wife of the deceased Ramji Karsan and step mother of the plaintiff. The defendant no.3 is the husband of defendant no.1 and the suit property is an agricultural land bearing survey no. 122/1 admeasuring 17 acres 34 gunthas and survey no. 127/3 admeasuring 1 acre 31 gunthas, aggregating 19 acres 25 gunthas in the name and ownership of deceased Ramji Karsan.

1.4 The plaintiff's father Ramji Karsan expired about 29 to 30 years prior to the filing of the suit. Thereafter, the plaintiff as well as defendants no. 1 and 3 are jointly in possession of the suit property and after the marriage of the plaintiff, she went to the house of her husband at village Khadia before 20 to 25 years. After six to seven years thereafter, the defendant no.1 married with defendant no.3 and they were residing at village Ganfuliya since the defendant no.1 is the native of the same village and, therefore, the defendants no. 1 and 3 were looking after the suit property as well as they were giving share of the plaintiff from the product of the fields whenever the plaintiff used to go to demand the said products.

1.5 But since last three to four years, the defendants no. 1 and 3 have stopped or declined to give share from the product of the field to the plaintiff and, therefore, the plaintiff issued a show cause notice dated 30.6.1975 demanding partition and share of the plaintiff from the suit property. The plaintiff was replied by the defendants no. 1 and 3 that the plaintiff had already relinquished her share in the suit property and the plaintiff had also executed document to that effect.

2.1 The plaintiff pleaded that it was not true that the plaintiff had relinquished her share from the suit property and any document to that effect was executed. The plaintiff denied execution of document on 5.8.1958 and alleged that the said document was bogus and she had not received amount of Rs. 1000/- and not relinquished her share in the suit property. It was pleaded that at the time of death of her father, an amount of Rs. 1000/- was paid and on a blank paper, thumb impression of the plaintiff was taken in order to execute a document to that effect, but the plaintiff had never appeared before the Office of the Registrar.

2.2 It was also pleaded that on the basis of this bogus document and behind the back of the plaintiff, the defendants no. 1 and 3 had got entry in the suit land in the name of defendant no.1 and thereafter the land was entered in the name of defendant no.3 by the defendant no.1 for which the plaintiff had not received copies to that effect from the revenue department and hence the said entries made in the revenue record were not binding to the plaintiff and those entries would not come in the way of the plaintiff. The plaintiff pleaded that she had 1/3rd share in the suit property and the defendants no. 1 and 2 were the heirs of deceased Ramji Karsan and, therefore, the plaintiff filed the suit for partition and reliefs as stated above.

2.3 The defendant no.1 resisted the suit by way of filing written statement at Ex. 53 and thereby denied the allegations made in the suit. It was contended that the suit was not filed in proper form and, therefore, deserves to be dismissed. It was also contended that the suit was bad for estoppel and waiver and the suit being time barred, deserved to be dismissed. However, it was admitted that the suit property was of deceased Ramji Karsan, but the deceased Ramji Karsan had sold some of the suit land in his life time. The defendant no.1 also admitted that the deceased Ramji Karsan expired before 29 to 30 years, but it was denied that after the death of Ramji Karsan, the plaintiff was in possession of the suit property because the plaintiff had already gone to her in-law's house prior to the death of deceased Ramji Karsan.

2.4 It was further alleged that the plaintiff had executed document dated 5.8.1958 and thereby she had relinquished her share and it was not true that the said document was bogus and got up by the defendants because the said document was a registered document. It was

contended that the plaintiff had relinquished her share in the ancestral property of the deceased Ramji Karsan by registered document and the defendants were in possession and ownership since last many years in respect of the suit property and revenue entry was also made in the revenue record by the revenue authorities and after a long period, the plaintiff filed the suit in order to harass the defendants and, therefore, the defendant no.1 prayed for dismissal of the suit.

2.5 The defendants no. 2 and 3 also denied the suit by filing written statement at Ex. 52. The contentions raised by the defendants no. 2 and 3 are the same as that of defendant no.1 and, therefore, the same are not required to be repeated.

2.6 After filing the written statement, the defendants submitted amendment application at Ex. 128 and the said amendment application was allowed. It was pleaded in the written statement that the suit land was Barkhali land before 1947. Thereafter in 1949, Barkhali Abolition Act had come into existence and according to the provisions of the said Act, tenants farmers who were cultivating the land of Barkhalidar had got occupancy certificate by way of Kabja Hak. When Kabja Hak of the suit land was issued, Ramjibhai Karsanbhai had expired. It was further alleged that at the time of death of Ramji Karsan, he was a tenant of the suit land and it was cultivated by Jiviben, the defendant no.2 by way of Kabja Hak and, therefore, the defendant no.2 had got the land as personal rights and thereby the land in question was self acquired property of defendant no.2 and, therefore, the plaintiff was not entitled to get any share from the said suit land.

2.7 It was also pleaded that if it was said that the defendant no.2 had got the suit property as a widow of Ramji Karsan, then under section 14(1) of Hindu Succession Act, 1954, the defendant no.2 had become the sole owner of the suit land. It was further pleaded that as per the Hindu Law, Ramji Karsan expired without leaving son and, therefore, the daughters of deceased Ramji had the only right to residence and maintenance and no other rights as alleged by the plaintiff had accrued.

3.1 The trial Court framed issues at Ex. 77 and considered the oral as well as documentary evidence of plaintiff's witnesses, namely the plaintiff examined herself at Ex. 81, Bhanji Darji, PW 2 Ex.85, Prafulchandra Navsukhrai Nanavati, PW 3 Ex.92 and Dhirajlal Prabhulal Pandya, PW 4.

3.2 On the other hand, the defendants examined DW 1 Santaben Samji at Ex. 108, DW 2 Narsi Samji at Ex. 118 and DW 3 Bhavan Govind at Ex. 121.

3.3 The trial Court, after considering the documents Ex. 109 and 110 whereby the plaintiff had relinquished her share in the suit property by receiving Rs. 1000/-and considering the oral evidence, found that the documents Ex. 109 and 110 were executed by the plaintiff and she had put her thumb impression and as per Ex. 109, the plaintiff had relinquished her share in the suit property by receiving Rs. 1000/- from the defendants on 5.8.1958 and had made sale deed of the suit property bearing survey no. 122 paiki admeasuring 17 acres 35 gunthas and survey no. 127 paiki admeasuring 2 acres 2 gunthas in favour of defendant no.1 and both the aforesaid suit documents were registered and the same were referred in the evidence of Bhanji Darji, Ex.85. The trial court found that the plaintiff had relinquished her share by executing documents Ex. 109 and 110 on 5.8.1958 and, therefore, she was not entitled for her share as alleged by the plaintiff.

3.4 The trial court has also considered the alternative argument that even if documents Ex. 109 and 110 were not executed, since the plaintiff was a married daughter, under the provisions of Hindu Succession Act, 1956, a married daughter cannot get any kind of share from the suit property of her father for which the trial court has considered the judgment of the Supreme Court in the case of Smt. Rajvani Vs. Chief Settlement Commissioner, Delhi and ors., reported in XXI GLT (SC) 172.

3.5 The trial court has also considered that the defendant no.2 was in possession of the suit property before 1956 and she had got occupancy certificate under the Barkhalidar Abolition Act and, therefore, she had become the sole owner of the property in view of Hindu Succession Act and, therefore, the plaintiff had no right or interest in the suit property and the defendant no.2 was entitled to sell the suit property being the sole owner.

3.6 The defendant no.2 produced Hak Patrak at Ex.95 according to which the suit lands were received by deceased Ramji Karsan, husband of Bai Jiviben, defendant no.2 under the provisions of Saurashtra Barkhalidar Abolition Act, 1951. Under section 12 of the said Act, the occupancy certificate was issued in favour of deceased Ramji Karsan Haste Jivi Amba. Thus, the defendant no.2 was in possession of the suit property

since 1947 i.e. prior to the enforcement of Hindu Succession Act, 1956. The plaintiff had married during the life time of Ramji Karsan who was the father of the plaintiff. Thus, the marriage of the plaintiff had taken place before the enforcement of Hindu Succession Act, 1956 and under the old Hindu Succession Act, the plaintiff cannot get her share in the suit property and, therefore, the defendant no.2 had become the sole owner of the suit property under section 42 of the Hindu Succession Act, 1956 as widow's estate or as per the law of survivorship.

3.7 The trial Court has also relied upon the decision in the case of Smt. Indubai, w/o Pandhari Naik Vs. Vyankati Vithobha Swadhe and ors., reported in AIR 1966 Bombay 64 wherein it was observed that under section 14(1) of the Hindu Succession Act, 1956, to convert the widow's estate into an absolute one in respect of all the property possessed by her at the time when the Act came into force, it confers an absolute estate on such widows of coparceners which are heritable and do not come to end on widow's death. In view of these observations, the learned Trial Judge held that in the instant case, the defendant no.2 was in possession of the suit land as her husband had not left a male child and daughter i.e. the plaintiff was married before 1956 and, therefore, the defendant no.2 had become the sole owner and she had the right to dispose of the said property. Thus, the trial Court found that the suit is not maintainable under section 14(1) of the Hindu Succession Act, 1956 so far as the plaintiff is concerned and the suit of the plaintiff was dismissed and the plaintiff was directed to pay court fees of Rs. 890/-.

4.1 Having considered the oral as well as documentary evidence on record and more particularly Ex. 109 and 110 which are executed in the year 1958 and in view of the fact that the defendant no.2 was in possession much prior to relinquishing share by the plaintiff, the findings and the ultimate conclusion of the trial court are just and proper and no infirmity is found and no findings, as suggested by the appellant, are contrary to the evidence or the documents on record. We are, therefore, of the opinion that the reasonings and the ultimate conclusion of the trial court are just and proper. Hence the present appeal is required to be dismissed and the same is dismissed with no order as to costs.

(Kshitij R.Vyas, J.)

(K.S.Jhaveri, J.)

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